NOTES OF CASES.

Attorney and Client—Lien of Attorney—Action in State Court under Federal Employers' Liability Act.—In Holloway *v.* Dickinson (Minn.), 163 N. W. 791, it was held that an attorney has a lien upon a cause of action instituted in a state court under the Federal Employers' Liability Act, and that the lien given by the state law may be enforced in such action. The court said:

"This appeal concerns the enforcement of the attorney's lien after the parties to the action settled the same without compensating the attorney for the services he rendered plaintiff. On the application of the attorney the court vacated the dismissal of the action and permitted him to intervene, for the purpose of having his right to a lien and the amount thereof determined. The issues were submitted to a jury. A general verdict was rendered in favor of the intervener, and by special verdict it was found that plaintiff was mentally competent to make the contract under which intervener asserted his lien, and that such contract was not void for champerty. Defendant appeals.

"Appellant claims that he is entitled to judgment notwithstanding the verdict for two reasons: (1) The cause of action being one arising under the Federal Employers' Liability Act, the attorney's lien given by the state law does not attach thereto. * * * It is contended that in the act referred to Congress legislated upon every phase of the subject of the payment of damages to employees injured while engaged in interstate commerce (citing Mondou *v.* N. Y., N. H. & H. R. R., 223 U. S. 1, 32 Sup. Ct. 169, 56 L. Ed. 327, 38 L. R. A., N. S., 44; Michigan Cent. R'y *v.* Vreeland, 227 U. S. 59, 33 Sup. Ct. 192, 57 L. Ed. 417, Ann. Cas. 1914C, 176; Seaboard Air Line *v.* Horton, 233 U. S. 492, 34 Sup. Ct. 635, 58 L. Ed. 1062, L. R. A., 1915C, 1, Ann. Cas., 1915B, 475; Staley *v.* Illinois Cent. R'y, 268 Ill. 356, 109 N. E. 342, L. R. A., 1916A, 450), and that this legislation includes the amount of recovery and distribution thereof under such decisions as Gulf, Col. & S. F. R'y *v.* McGinnis (228 U. S. 173, 33 Sup. Ct. 426, 57 L. Ed. 785), N. Car. R'y *v.* Zachary (232 U. S. 248, 34 Sup. Ct. 305, 58 L. Ed. 591, Ann. Cas., 1914C, 159) and Taylor *v.* Taylor (232 U. S. 363, 34 Sup. Ct. 350, 58 L. Ed. 638). Hence it is said that state statutes cannot impress an attorney's lien on the cause of action, or enforce payment of any sum of money except the sum contemplated by the act, and that only to the beneficiaries thereof. To do more is said to penalize the railroad company and to burden interstate commerce. The argument of counsel is ingenious but not convincing. Congress has not attempted to regulate the dealings between the railroad employee, injured in interstate commerce, and his attorney. No doubt that body from the first inception of this sort of legislation realized full well that the railroads as a rule would not voluntarily pay adequate compensation to the

injured employee or his beneficiaries, but that usually such compensation could be obtained only at the end of a bitterly contested lawsuit requiring an attorney's services, or through a series of negotiations carried on by an attorney. It could not have been contemplated that this work of an attorney should be a gratuity. Neither is it supposable that the members of Congress are unaware of the regretable fact that among attorneys there has long existed keen competition for this sort of litigation and frequent overreaching in bargaining for an unconscionable fee. Notwithstanding all this, we find no provision in the act in any manner bearing upon the relation or compensation of an attorney who is employed to enforce the liability thereby created. The fee going to the attorney cannot be considered a burden upon the carrier, or indirectly upon interstate commerce. It comes out of the sum which by the settlement or the judgment in the action is awarded the client. The person entitled to compensation under the Federal Employers' Liability Act has the right to enforce his cause of action in the state courts, and when he so elects we see no reason why, in the absence of federal legislation indicating to the contrary, the attorney may not call upon the court to protect his rights under the lien given by the state statute upon the cause of action. In the instant case defendant had full notice of the attorney's rights before the payment of the money on the settlement made with the client. Before such settlement was made defendant's representative interviewed intervener and announced that no effort would be made to protect against the lien—defendant taking the ground that intervener had no lawful lien which he could assert."

Federal Employers' Liability Act—What Constitutes Interstate Commerce.—In Alabama Great Southern R. R. *v.* Bonner (Ala.), 75 So. 986, it was held that a member of a posse employed by a railroad company to search for and apprehend bandits who had robbed a train engaged in interstate commerce was not himself engaged in such commerce so as to render the company liable for his death under the Federal Employers' Liability Act. The court said:

"In a very recent decision of the Supreme Court of the United States, not yet officially reported, it was held that by the very terms of the statute the true test is the nature of the work being done at the time of the injury or death, and that the mere fact that the parties expected in the future to engage in interstate commerce, or (we may add) had in the past engaged in such work, is not sufficient to bring the case within the statute; that to come within the statute the act or work being performed by the injured servant must be an act or work of interstate commerce, or must be so directly and immediately connected with interstate commerce as to be a part of it or of other acts thereof, or a necessary incident thereto. See Erie